Supreme Court, U. S.
FILED
AUG 9 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-182

BENEFICIAL FINANCE CO. OF GARY, INC.,
Petitioner,

v.

DOROTHY ALLEN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

BRIEF AMICUS CURIAE OF NATIONAL CONSUMER FINANCE ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

VERNON L. EVANS
Associate General Counsel
NATIONAL CONSUMER FINANCE ASSOCIATION
1000 Sixteenth Street, N.W.
Washington, D. C. 20036
Attorney for Amicus Curiae

August 9, 1976

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No.

BENEFICIAL FINANCE CO. OF GARY, INC.,
Petitioner,

v.

DOROTHY ALLEN,
Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit

---

BRIEF AMICUS CURIAE OF NATIONAL CONSUMER FINANCE ASSOCIATION IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

INTEREST OF NATIONAL CONSUMER FINANCE ASSOCIATION [1]

The National Consumer Finance Association (hereinafter referred to as "NCFA") organized in 1916, is a national trade association of companies engaged in the consumer credit business, representing approximately 900

---

[1] Counsel for both Petitioner and Respondent have consented to the filing of this brief.

member companies, including petitioner, operating over 17,000 loan and finance offices. NCFA represents organizations ranging from a single small office to substantial nationwide chain organizations. The business of these companies is primarily direct credit lending to consumers and the purchase of sales finance paper on consumer goods. However, some members have retail subsidiaries, others are subsidiaries of manufacturers, others are subsidiaries of highly diversified corporations, and since the 1970 Amendments to the Bank Holding Company Act, 12 U.S.C. 1843(c)(8), a growing number are subsidiaries of bank holding companies.

Finance companies held $37 billion of the consumer installment credit outstanding at the end of May, 1976 according to figures released by the Federal Reserve Board. This amounted to 22.6% of the total installment credit outstanding from all credit grantors. At that time finance companies held $17.1 billion in personal loans, $12.1 billion in retail auto paper, $3.3 billion in mobile home paper, and $4.5 billion in other forms of consumer credit. Thus it can be seen that the companies represented by NCFA hold a significant portion and a wide variety of the consumer credit outstanding in the United States, and that they perform an important function in the American economy.

The resolution of the question presented by the decision of the Court of Appeals is important to the consumer finance industry, of which NCFA members account for over three-fourths of the business done annually. The subtractional method of disclosure which the Court of Appeals found to be in violation of Regulation Z is the same order used by Petitioner and related companies in their credit operations in most states and is the same order used by other member companies of NCFA in many states. Judicial resolution of this unsettled question by this Court is of utmost importance

to NCFA member companies throughout the United States.

In a recent survey of a small, but it is believed representative, sample of the membership of NCFA, approximately one half of the member companies responding stated that they use a subtractional method of presentation in making disclosures required by the Truth in Lending Act and Regulation Z. Thus, billions of dollars in outstanding credit of finance companies alone will be affected by this decision.

Should the question presented in this case go unresolved, consumer finance companies, as well as other creditors, may be subject to a large number of law suits, not only in the Seventh Circuit, but throughout the nation. The potential monetary liability of each creditor is substantial under Section 130 of the Truth in Lending Act. 15 U.S.C. 1640. It could be, in addition to any actual damage sustained by a person, twice the amount of the finance charge, up to $1,000, plus costs and attorney's fees. In a class action suit, it could be up to the lesser of $100,000 or 1% of the defendant creditor's net worth. And, should this question go unresolved, creditors in other circuits, relying on their understanding of Regulation Z and the Federal Reserve Board's interpretation of Regulation Z, who continue to use the subtractional method of disclosure after March 23, 1977, will be subject to potential liability in a class action suit of the lesser of $500,000 or 1% of net worth. 15 U.S.C. 1640(a)(2)(B), as amended Pub. L. 94-240.

Many of the member companies of NCFA have offices and conduct business operations in more than one state. Some conduct business in most states. If the question presented in this case goes unresolved, these companies will be forced to operate under continually uncertain legality, and may be forced to continually alter their operating procedures, at great expense, from district to

district and circuit to circuit because of varying judicial responses to the decision of the Seventh Circuit Court in this case. Such a result will not only be harmful to consumer finance companies and other creditors, but will be harmful to consumers by adding to the overall cost of credit, and will be harmful to Congress' intent in enacting the Truth in Lending Act of allowing the Federal Reserve Board to ". . . prescribe regulations to carry out the purposes . . ." of the Act. 15 U.S.C. 1604.

ARGUMENT

The consumer credit business, in which Petitioner and all other NCFA member companies are engaged, has traditionally and historically been governed by state laws and regulations requiring strict formalities with respect to documents and customer disclosures. Today the "consumer finance industry is still the most heavily regulated segment of the consumer credit industry." Report of the National Commission on Consumer Finance (GPO, Dec. 1972), p. 45. In recent years, Congress has assumed legislative responsibility in the field of consumer credit and has enacted laws governing the conduct of creditors on a national basis. Such legislation includes the Consumer Credit Protection Act, 15 U.S.C. §§ 1601 et seq. (1968), of which the Truth in Lending Act is a part. Subchapter I—Consumer Credit Cost Disclosure § 1601-1665.

The Truth in Lending Act explicitly delegates to the Federal Reserve Board the authority and responsibility to

> ". . . prescribe regulations to carry out the purposes of this subchapter. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith." 15 U.S.C. 1604.

The Board has prescribed such regulations, Regulation Z, 12 C.F.R. § 226 et seq., and from time to time prescribed amendments to it. It has more frequently offered interpretations of it for the guidance of creditors and consumers. The Act also delegates to the Federal Trade Commission the responsibility for enforcing the requirements of Regulation Z, as regards finance companies, 15 U.S.C. 1607(c).

The provision of Regulation Z which is at issue in the instant case, 12 C.F.R. § 226.6(a), provides in pertinent part as follows:

> "The disclosures required to be given by this Part shall be made clearly, conspicuously, in meaningful sequence, in accordance with the further requirements of this section, and at the time and in the terminology prescribed in applicable sections."

The lower court held that the disclosures given by Petitioner to Respondent were not "in meaningful sequence."

The Federal Reserve Board has not interpreted this provision in such a way as to find the disclosure statement used by Petitioner in violation of this provision, nor has the Federal Trade Commission enforced this provision based on such an interpretation.

For the court below to venture into the domain delegated to the Federal Reserve Board and the Federal Trade Commission is contrary to the intent of Congress.

The Federal Reserve Board has exercised the authority granted to it under 15 U.S.C. 1604 and has promulgated Regulation Z. Petitioners and many other creditors have interpreted § 226.6(a) of that Regulation as allowing the kind of subtractional order of disclosure used in the dis-

closure form in the instant case. That interpretation by creditors is not contrary to any interpretation of the Federal Reserve Board, or its staff.

In a letter dated May 20, 1976, which was issued nine (9) days after the lower court's denial of Petitioner's motion for rehearing, the Assistant Director of the Office of Saver and Consumer Affairs of the Federal Reserve Board stated as follows:

> "In staff's opinion, the Regulation does not require all presentations to be made within the rigid confines of some particular series of additions or subtractions. In fact, we believe it is not really appropriate to speak of a "summation" or "subtractional" method as though these were two separate and mutually exclusive types of disclosures . . .
>
> "In staff's view, 'meaningful sequence' cannot—and should not—be defined by reference to some rigid concept of arithmetical progression. Since a primary purpose of this requirement and of the Truth in Lending Act as a whole is to adequately inform consumers of the terms and costs of credit, we believe that § 226.6(a) requires that related terms be presented in an order which will assist the customer in understanding their relationship. Given the wide variety in credit transactions, 'meaningful sequence' must be determined by reference to the particular set of disclosures under consideration . . ."

Although this letter is an informal staff opinion and not subject to the procedures prescribed by Section 130 (f) of the Truth in Lending Act, as amended by P.L. 94-222, it indicates that the opinion of the Federal Reserve Board's staff as to the meaning of § 226.6(a) is contrary to the decision of the lower court. Such informal staff opinions should be given great deference. *Philbeck* v. *Timmers Chevrolet, Inc.*, 499 F. 2d 971 (5th Cir., 1974); *Eby* v. *Reb Realty, Inc.*, 495 F. 2d 646 (9th

Cir., 1974); *Bone* v. *Hibernia Bank*, 493 F. 2d 135 (9th Cir., 1974).

Additional weight should be given to such staff opinions in view of the recent amendment to Section 130(f) of the Truth in Lending Act. Section 130(f) now provides that:

> "No provision of this section or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board *or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor*, notwithstanding that after such act or omission has occurred such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason." (Added language italicized.)

This recent amendment indicates the continuing intention of Congress, stated in the original Truth in Lending Act, to delegate to the Federal Reserve Board the authority to ". . . prescribe regulations to carry out the purposes . . ." of the Act.

CONCLUSION

The petition for a writ of certiorari should be granted so that this Court can decide whether the decision of the Circuit Court of Appeals is contrary to the provision of the Truth in Lending Act in that the decision usurps the authority delegated to the Federal Reserve Board by the Act and that the decision misinterprets the Regulation promulgated by the Federal Reserve Board in exercising that authority.

Unless these questions are resolved by this Court, there will be continuing uncertainty in lower courts and confusion among creditors. More litigation will ensue and the ability of the Federal Reserve Board to carry out the purposes of the Truth in Lending Act by prescribing and administering regulations will be impaired. The potential financial loss to creditors, in litigation and in continued uncertainty regarding the legality of operating procedures, is great.

Accordingly, the National Consumer Finance Association respectfully submits that the Petition for a Writ of Certiorari should be granted.

VERNON L. EVANS
Associate General Counsel
NATIONAL CONSUMER FINANCE ASSOCIATION
1000 Sixteenth Street, N.W.
Washington, D. C. 20036
Attorney for Amicus Curiae

August 9, 1976